

AMENDING THE CODE OF LAW FOR THE DISTRICT OF COLUMBIA
BY MODIFYING THE PROVISIONS RELATING TO THE ATTACH-
MENT AND GARNISHMENT OF WAGES, SALARIES, AND COM-
MISSIONS OF JUDGMENT DEBTORS

JUNE 30, 1959.—Ordered to be printed

Mr. HARTKE, from the Committee on the District of Columbia,
submitted the following

R E P O R T

[To accompany H.R. 836]

The Committee on the District of Columbia, to whom was referred the bill (H.R. 836) to amend the code of law for the District of Columbia by modifying the provisions relating to the attachment and garnishment of wages, salaries, and commissions of judgment debtors, and for other purposes, after full consideration report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Page 7, line 16, strike the word "debtor" and insert in lieu thereof "employer-garnishee".

Page 8, strike line 19 and insert in lieu thereof "section 1104A"); and".

The purpose of the bill is to amend the code of law for the District of Columbia by modifying the provisions relating to the attachment and garnishment of wages, salaries, and commissions of judgment debtors, so as to provide a more workable statute for the garnishment of wages within the District of Columbia ("An act to establish a code of law for the District of Columbia," approved March 3, 1901, as amended). In substance this bill would provide a graduated percentage lien and levy upon the moneys due a judgment debtor from his employer, and such lien would continue until the judgment is satisfied.

Procedurally and substantively, many difficulties have arisen within the District of Columbia under the present law: (1) The great number of cases filed has placed tremendous workload on the courts (48,000 cases per year). (2) There has been unfair treatment of nonresident judgment debtors who, though not working or receiving wages within

the District of Columbia, have been garnisheed in this jurisdiction and denied the benefits given to a resident. (3) The exemption under present law is unworkable, economically unsound, and burdensome on the courts. Presently, the majority of judgment debtors fail to take full advantage of the exemption provisions because of its technical nature, court interpretation, and required court attendance. The exemption procedure promotes an unwarranted coercive influence on judgment debtors by reason of delays in the payment of salaries to employees until determination of the litigation. This bill is designed to alleviate these problems.

This bill is based on the theory that those judgment debtors who can least afford it are affected the least by an attachment of their wages and conversely, those who can best afford a heavier levy on their wages are those most affected by this proposal. This is accomplished by a graduated percentage lien based upon the total salary, with a minimum levy of 10 percent on smaller wage earners and graduated upward to a maximum of a 50-percent lien and continuing levy on larger wage earners.

The percentages that are used in the event of an attachment are as follows: 10 percent of all wages up to \$200 per month, 20 percent of that amount above \$200 and up to \$500 per month, and 50 percent of all wages in excess of \$500 per month. As an example, if an individual earned \$150 per week, the following amount would be due a judgment creditor at the end of a 4-week month, namely \$130. If an employee earns only \$200 per month or \$50 a week, only \$20 of that employee's salary would be deducted each month, assuming there are 4 weeks to the month.

The bill also provides for:

(1) Only one attachment upon the wages of a judgment debtor shall be satisfied at one time and when more than one attachment is issued upon the wages of the same person and served upon the same employer-garnishee, the attachment first in the hands of the marshal shall have priority;

(2) Certain duties upon the attaching creditor and the employer-garnishee;

(3) A provision dealing with the employment lapse of a debtor;

(4) A clear definition of the term "wages;"

(5) Provisions to protect creditors in the event of fraudulent attachments and fraudulent employment agreements between the wage earner and his employer;

(6) Protection for a debtor's family if he is under a court-support order, or subsequently placed thereunder; and

(7) Protection for nonresident defendants.

The purpose of the committee amendments is to correct printing errors in the bill.

There will be no additional cost to the District of Columbia by the enactment of this legislation. The District of Columbia Commissioners have no objection to the passage of this measure, and the bill is supported by the Bar Association of the District of Columbia.

PRINCIPAL PROVISIONS OF THE BILL

Section 1 of the bill would prescribe the method and mode of attachments upon wages to be followed hereafter within the District

of Columbia. This section is composed of 10 subsections which clearly set out the rights and duties of the parties. The following is a subsection analysis of section 1:

Subsection (a) provides a 10-percent lien and continuing levy upon the gross wages due or to become due to the judgment debtor up to \$200 per month, the moneys earned by the debtor in excess of \$200 and up to \$500 per month would be subject to a 20-percent lien and continuing levy, all moneys earned above the \$500 level would be subject to a 50-percent levy. This percentage attachment is to continue as a lien against the wages of an employee until the judgment, interest, and costs are fully paid. In the event more than one attachment is filed against the same employer for money due to the same employee, the writs so filed will take priority as of the time they are received by the U.S. marshal and only one levy can be made at any one time until the attachment having priority is satisfied.

Subsection (b) provides a duty upon the employer-garnishee to withhold and pay over to the creditor the amounts prescribed by the bill on a monthly basis. The employer-garnishee has 15 days after the close of the last pay period of the month to so remit. If the employer complies with the requirements, he is absolved of any liability, and in the event the employer has received a written notice of a court proceeding attacking the attachment or the judgment upon which it is based, he shall cease payment to the creditor until receipt of a court order terminating such proceedings.

Subsection (c) provides that the creditor must (1) file a receipt with the clerk of the court every 3 months showing the amounts received and the balance due at that time; (2) file a final receipt and vacate the attachment within 20 days after satisfaction. If the creditor fails to comply with the above requirements, he can be compelled by legal action to so comply.

Subsection (d) provides a penalty to an employer in that he would be liable to a judgment if he failed to pay the creditor the percentages provided for in this act. Such liability is limited to an amount equal to the percentages that said employer-garnishee should have paid the creditor. Their loss is in no way intended to be passed on to the employee.

Subsection (e) provides that if the debtor resigns or is dismissed from his employment while his wages are subject to an attachment, this attachment would lapse unless the debtor was reinstated within 90 days.

Subsection (f) provides an additional meaning to the words "wages, salaries, and commissions" in that it adds drawing accounts and profit sharing or sums based on work done or produced and clearly defines what is meant by wages. This subsection further provides that wages as defined by this act do not include the remuneration received by a nonresident who is employed within the District of Columbia for 15 days or less. This particular provision is to protect businessmen within the District from unscrupulous persons who, if it were not for this limitation, could reap great benefit from this bill.

Subsection (g) provides that all support orders would take precedence or be equal to attachments filed under this bill in the discretion of the court, except that up to a maximum of 50 percent of the wages an employee receives a pay period would be subject to an attachment in a support or maintenance case.

Subsection (h) provides that the attachment prescribed hereunder shall not lapse due to any existing limitation in the law if such attachment has been levied within 6 years after judgment has been obtained.

Subsection (i) provides that when it is shown that a debtor is employed by a friend or relative at a salary so low as to impede creditors in attachment cases, the court may direct the employer to make payments to the creditor based on a reasonable value for the services rendered by such judgment debtor or upon the debtor's present earning ability.

Subsection (j) provides a remedy for those cases where a debtor's salary has been attached solely for the purpose of preventing or delaying the collection, by means of attachment, of just debts.

Section 2 would clarify the existence of only one attachment upon wages at a time and the priority provided.

Section 3 provides a penalty against the employer if he does not answer the writ of attachment as hereby prescribed.

Section 4 clarifies existing law in that it clearly takes salaries and wages out of the present exemption statute.

Section 5 provides that nonresidents be treated as residents under an attachment before judgment procedure.

Section 6 provides that the amendments made by this act shall not apply with respect to attachments until 60 days after the enactment of this act. The logic for this 60-day period is to provide the courts sufficient time within which to formulate administrative plans and acquire proper forms with which to carry out the purposes of this garnishment legislation.

Section 7 provides the usual severability clause.

Section 8 provides that the judges of the courts of the District of Columbia, whose duty it will be to administer this proposal, establish rules of procedure to effectuate the purpose of the bill.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law in the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, existing law in which no change is proposed is shown in roman):

(31 Stat. 1362)

"SEC. 1104A. ATTACHMENT OF WAGES.—(a) Notwithstanding any other provision of this chapter, where an attachment is levied upon wages due a judgment debtor from an employer-garnishee, such attachment shall become a lien and a continuing levy upon the gross wages due or to become due to the judgment debtor for the amount specified in the attachment to the extent of (1) 10 per centum of so much of the gross wages as does not exceed \$200 due or to become due to the judgment debtor from the employer-garnishee for the pay period or periods ending in any calendar month, plus (2) 20 per centum of so much of the gross wages as exceeds \$200 but does not exceed \$500 due or to become due to the judgment debtor from the employer-garnishee for the pay period or periods ending in any calendar month, plus (3) 50 per centum of so much of the gross wages as exceeds \$500 due or to become due to the judgment debtor from the employer-

garnishee for the pay period or periods ending in any calendar month. Such levy shall be a continuing levy until the judgment, interest, and costs thereof are fully satisfied and paid, and in no event shall moneys be withheld, by the employer-garnishee from the judgment debtor, in amounts greater than those prescribed by this section. Only one attachment upon the wages of a judgment debtor shall be satisfied at one time. Where more than one attachment is issued upon the wages of the same judgment debtor and served upon the same employer-garnishee, the attachment first delivered to the marshal shall have priority, and all subsequent attachments shall be satisfied in the order of priority set forth in section 452 of this Act.

"(b) It shall be the duty and responsibility of any employer upon whom an attachment is served, and who at such time is indebted for wages to an employee who is the judgment debtor named in such attachment, or who becomes so indebted to such judgment debtor in the future and while such attachment remains a lien upon such indebtedness, to withhold and pay to the judgment creditor, or his legal representative, within fifteen days after the close of the last pay period of the judgment debtor ending in each calendar month, that percentage of the gross wages payable to the judgment debtor for the pay period or periods ending in such calendar month to which the judgment creditor is entitled under the terms of this section until such attachment is wholly satisfied, provided that upon written notice of any court proceeding attacking such attachment or the judgment on which it is based, the employer shall make no further payments to the judgment creditor or his legal representative until receipt of an order of court terminating such proceedings. Any payments made by an employer-garnishee in conformity with this subsection shall be a discharge of the liability of the employer to the judgment debtor to the extent of such payments. Under this subsection the employer-garnishee shall not withhold or pay over more than 10 per centum of the gross wages payable to the judgment debtor for any pay period ending in any calendar month until the total amount of gross wages paid or payable to the judgment debtor for all pay periods ending in such calendar month equals \$200, nor more than 20 per centum of the gross wages in excess of \$200 payable to the judgment debtor for any pay period ending in any calendar month until the total amount of gross wages paid or payable to the judgment debtor for all pay periods ending in such calendar month equals \$500.

"(c) it shall be the duty and responsibility of the judgment creditor (1) to file with the clerk of the court, every three months after the serving of an attachment, a receipt showing the amount received and the balance due under the attachment as of the date of filing, and (2) to file a final receipt with the court, furnish a copy thereof to the employer-garnishee, and to obtain a vacation of the attachment within twenty days after the attachment has been satisfied. If the judgment creditor fails to file any of the receipts prescribed in this subsection, any interested party may move the court to compel the defaulting judgment creditor to appear in court and make an accounting forthwith. The court may, in its discretion, enter judgment for any damages, including a reasonable attorney's fee, suffered by, and tax costs in favor of, the party filing the motion to compel the accounting.

"(d) If the employer-garnishee fails to pay to the judgment creditor the percentages prescribed in this section of the wages which become payable to the judgment debtor for any pay period, judgment shall be entered against him for an amount equal to the percentages with respect to which such failure occurs.

"(e) If a judgment debtor resigns or is dismissed from his employment while an attachment upon his wages is wholly or partly unsatisfied, such attachment shall lapse and no further deduction shall be made thereon unless the judgment debtor is reinstated or reemployed within ninety days after such resignation or dismissal.

"(f) For purposes of this section, the term 'wages' means—

"(1) wages, salary, commission, or other remuneration for services performed by an employee for his employer, including any such remuneration measured partly or wholly by percentages or share of profits, or by other sums based upon work done or results produced, whether or not the employee is given a drawing account, and

"(2) any drawing account made available to an employee by his employer.

The term 'wages' shall not include any amount paid or payable to an employee who is not a resident of the District of Columbia as remuneration for services performed within the District of Columbia, if the period for which the employee is engaged by the employer to perform such services within the District of Columbia is less than fifteen consecutive days' duration; and any such amount shall be subject to attachment without regard to this section.

"(g) The per centum limitations prescribed by subsection (a) of this section shall not apply in the case of execution upon a judgment, order, or decree of any court of the District of Columbia for the payment of any sum for the support or maintenance of a person's wife, or former wife, or children, and any such execution, judgment, order, or decree shall, in the discretion of the court, have priority over any other execution which is subject to the provision of this section. In the case of execution upon a judgment, order, or decree for the payment of such sum for support or maintenance, the limitation shall be 50 per centum of the gross wages due or to become due to any such person for the pay period or periods ending in any calendar month.

"(h) No attachment issued by the municipal court for the District of Columbia upon a judgment of such court duly docketed in the United States District Court for the District of Columbia, and levied within six years from the date of such judgment upon the wages due or to become due to the judgment debtor from the employer-garnishee, shall lapse or become invalid prior to complete satisfaction solely by reason of the expiration of the period of limitation set forth in section 4(c) of the Act of April 1, 1942 (56 Stat. 193; D.C. Code 11-755).

"(i) Where the judgment debtor claims or is proved to be rendering services to or employed by a relative or other person or by a corporation owned or controlled by a relative or other person, without salary or compensation, or at a salary or compensation so inadequate as to satisfy the court that such salary or compensation is merely colorable and designed to defraud or impede the creditors of such debtor, the court may direct such employer-garnishee to make payments on account of the judgment, in installments, based upon a reasonable value of the services rendered by such judgment debtor under his said employment or upon said debtor's then earning ability.

"(j) Where an attachment levied under section 1104A is based upon a judgment obtained by default or consent without a trial upon the merits, the court, upon motion of any interested person, may quash such attachment upon satisfactory proof that such judgment was obtained without just cause and solely for the purpose of preventing or delaying the satisfaction of just claims."

(31 Stat. 1360, 68 Stat. 1043)

INTERROGATORIES

(a) In all cases of attachment the plaintiff may exhibit interrogatories in writing, in such form as may be allowed by the rules or special order of the court, to be served upon any garnishee concerning any property of the defendant in his possession or charge or any indebtedness of his to the defendant at the time of the service of the attachment or between the time of such service and the filing of his answers to said interrogatories; and the garnishee shall file his answers verified by a written declaration that such answers are made under the penalties of perjury, to such interrogatories within ten days after service of the same upon him. In addition to the answers to written interrogatories required of him, the garnishee may, on motion, be required to appear in court and be examined orally, under oath, touching any property or credits of the defendant in his hands.

(b) Only one attachment upon goods, chattels, and credits of a judgment debtor shall be satisfied at one time. Where more than one such attachment issued against the same judgment debtor has been served on any garnishee such attachments shall be satisfied in the order in which they were served upon the garnishee. *This subsection shall not apply with respect to an attachment upon wages to which section 1104A of this Act applies.*

(c) Every person who willfully makes and subscribes any return, statement, or other document, pursuant to this section, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter shall be subject to the penalties prescribed for perjury.

(31 Stat. 1361)

JUDGMENT AGAINST GARNISHEES

[If] Subject to the provisions of section 1104A of this Act, if a garnishee shall have admitted credits in his hands, in answer to interrogatories served upon him, or the same shall have been found upon an issue made as aforesaid, judgment shall be entered against him for the amount of credits admitted or found as aforesaid, not exceeding the amount of the plaintiff's judgment, and costs, and execution shall be had thereon not to exceed the credits in his hands; but if said credits shall not be immediately due and payable, execution shall be stayed until the same shall become due; and if the garnishee shall have failed to answer the interrogatories served on him, or to appear and show cause why a judgment of condemnation should not be entered, such judgment shall be entered against him for the whole amount of the plaintiff's judgment and costs, and execution shall be had thereon.

(31 Stat. 1363, 58 Stat. 818, 66 Stat. 59)

EARNINGS

(a) The [earnings, salary] *earnings (other than wages, as defined in section 1104A), insurance, annuities, or pension or retirement pay-*

ments, not otherwise exempted, not to exceed \$200 each month, of any person residing in the District of Columbia, or of any person who earns the major portions of his or her livelihood in the District of Columbia, regardless of place of residence, who provides the principal support of a family, for two months next preceding the issuing of any writ or process against him, from any court or officer of and in said District shall be exempt from attachment, levy, seizure, or sale upon such process, and the same shall not be seized, levied on, taken, reached, or sold by attachment, execution, or any other process or proceedings of any court judge, or other officer of and in said District: *Provided, however,* That where husband and wife are living together, the aggregate of the earnings [salaries] insurance, annuities, and pension or retirement payments of the husband and wife shall be the amount which shall be determinative of the exemption of either in cases arising ex contractu.

(b) The [earnings, salary] *earnings (other than wages, as defined in section 1104A)*, insurance, annuities, or pension or retirement payments, not otherwise exempted, not to exceed \$60 each month for two months preceding the date of attachment of all persons residing in the District of Columbia, or of persons who earn the major portions of their livelihood in the District of Columbia, regardless of place of residence, who do not provide for the support of a family, shall be entitled to like exemption from attachment, levy, seizure, or sale. All wearing apparel belonging to such persons not exceeding \$300 in value, and mechanic's tools not exceeding \$200 in value, shall also be exempt.

(c) A notice of claim of exemption, or motion to quash attachment or other process against exempt property or money, may be filed in the office of the clerk of the court either by the debtor, his spouse, or a garnishee, and thereupon the court, after due notice, shall promptly act upon the notice, motion or other claim of exemption.

(31 Stat. 1262, 53 Stat. 567, 58 Stat 819)

(a) The attachment shall be levied on credits of the defendant, in the hands of a garnishee, by serving the latter with a copy of the writ of attachment and of the interrogatories accompanying the same, and a notice that any property or credits of the defendant in his hands are seized by virtue of the attachment, besides the notice required by section 16-302; and the undivided interest of the defendant in a partnership business shall be levied on by a similar service on the defendant's partner or partners.

The garnishee, in any case in which the property or credits attached or sought to be attached is held by him in the name of or for the account of another than the defendant, shall retain such property or credits during the period pending determination by the court of the propriety of the attachment or the rightful owner of such property or credits, and during such period, shall incur no liability whatsoever for such retention.

(b) It shall be unlawful for any employer to pay salary or [wages] *earnings* to an employee in advance of the time the same shall be due and payable, for the purpose of avoiding or preventing an attachment or garnishment against the earnings or salary of such employee, and such advance payment, as to the attaching creditor, shall be void: *Provided,* That after the service of one writ of attachment or garnish-

ment on a judgment against an employer, any payment of salary or earnings thereafter before the time when said salary or earnings are due and payable, made within a period of six months after the date of service of said writ or before the earlier satisfaction of such judgment, whichever is the earlier, shall as to such attaching creditor, be presumed to be in violation of this subsection and shall cast upon the said employer the burden of proving that such advance payment or payments were not for the purpose of avoiding the attachment of such salary or earnings.

(c) *Any attachment issued under section 445 of this Act solely on the ground that the defendant is not a resident of the District of Columbia and levied upon wages as defined in section 1104A(f) shall be subject to the provisions of section 1104A of this Act, except that the employer-garnishee shall pay over the wages withheld pursuant to such section only pursuant to the order of the court which has jurisdiction of the case. In applying the provisions of such section to any such attachment, the term "judgment debtor" as used in such section shall be considered to refer to the defendant in the case in which such attachment is issued; and the term "judgment creditor" shall be considered to refer to the plaintiff in such case.*



